

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

MARITIME COMMUNICATIONS/LAND )  
MOBILE, LLC )

EB Docket No. 11-71  
File No. EB-09-IH-1751  
FRN: 0013587779

Participant in Auction No. 61 and Licensee of Various )  
Authorizations in the Wireless Radio Services )

FILED/ACCEPTED

Applicant for Modification of Various )  
Authorizations in the Wireless Radio Services )

DEC 19 2011

Federal Communications Commission  
Office of the Secretary

ENCANA OIL AND GAS (USA), INC.; )  
DUQUESNE LIGHT COMPANY; DCP )  
MIDSTREAM, LP; JACKSON COUNTY RURAL )  
MEMBERSHIP ELECTRIC COOPERATIVE; )  
PUGET SOUND ENERGY, INC.; ENBRIDGE )  
ENERGY COMPANY, INC.; INTERSTATE POWER )  
AND LIGHT COMPANY; WISCONSIN POWER )  
AND LIGHT COMPANY; DIXIE ELECTRIC )  
MEMBERSHIP CORPORATION, INC.; ATLAS )  
PIPELINE – MID CONTINENT, LLC; DENTON )  
COUNTY ELECTRIC COOPERATIVE, INC., )  
DBA COSERV ELECTRIC; AND SOUTHERN )  
CALIFORNIA REGIONAL RAIL AUTHORITY )

Application File Nos.  
0004030479, 0004144435,  
0004193028, 0004193328,  
0004354053, 0004309872,  
0004310060, 0004314903,  
0004315013, 0004430505,  
0004417199, 0004419431,  
0004422320, 0004422329,  
0004507921, 0004153701,  
0004526264, 0004636537,  
and 0004604962

For Commission Consent to the Assignment of )  
Various Authorizations in the Wireless Radio )  
Services )

To: Marlene H. Dortch, Secretary

Attention: Richard L. Sippel, Chief Administrative Law Judge

**PINNACLE WIRELESS, INC. PETITION TO INTERVENE**

**Pinnacle Wireless, Inc.** (hereafter, "Pinnacle"), by undersigned counsel, pursuant to  
Section 1.223 (c) of the Commission's rules, 47 C.F.R. § 1.223 (c), hereby files this Petition to  
Intervene in the above-captioned proceeding.

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LIST AND CODE

Pinnacle leases spectrum from Maritime Communications/Land Mobile, LLC (“Maritime”). As a lessee of Maritime spectrum, Pinnacle is an interested party to this proceeding. Pinnacle relies on its spectrum leases with Maritime to support Pinnacle’s construction of trunked radio networks operated by two New Jersey State agencies (New Jersey Turnpike Authority and New Jersey Sports and Exposition Authority) for critical communications. Pinnacle has made significant investments to construct these existing networks operating on the Maritime spectrum for the State of New Jersey, and accordingly Pinnacle has a significant interest in the outcome of this proceeding. Pinnacle’s participation will assist the Commission in resolving the issues in question in this proceeding, specifically, issue (g) which addresses the construction of Maritime’s site based licenses.<sup>1</sup> Pinnacle has substantial information demonstrating the construction of station WRV374, a Maritime site based license that is included in Pinnacle’s spectrum leases with Maritime. Accordingly, Pinnacle respectfully requests grant of this Petition to Intervene.

### **1. Legal Standard**

A person not designated by the Commission as a party to a hearing may seek to intervene pursuant to Section 1.223 of the Commission’s rules. Where more than 30 days has passed since publication of the hearing designation order, Section 1.223 (c) provides in pertinent part that the petition to intervene, “shall set forth the interest of petitioner in the proceeding, show how such petitioner’s participation will assist the Commission in the determination of the issues in question, ... and must set forth reasons why it was not possible to file a petition within” 30 days of publication of notice in the Federal Register. The rule provides further that, “If, in the

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<sup>1</sup> “(g) To determine whether Maritime constructed or operated any of its stations at variance with sections 1.955(a) and 80.49(a) of the Commission’s rules. *Maritime Communications/Land Mobile, LLC*, Hearing Designation Order, ¶ 62 (released April 19, 2011) (“HDO”).

opinion of the presiding officer, good cause is shown for the delay in filing, he may in his discretion grant such petition or may permit intervention limited to particular issues or to a particular stage of the proceeding.” *Id.* As shown below, petitioner herein meets these requirements and accordingly respectfully requests the presiding Judge to exercise his discretion to grant this Petition.

**2. Pinnacle is an Interested Party Whose Participation Will Assist the Commission in the Determination of the Issues in Question**

Pinnacle has been a leading wireless communications systems integrator for more than ten years, both as an equipment dealer and service provider, and specializing in designing, constructing and maintaining land mobile radio systems. Pinnacle has first-hand knowledge of the construction of Station WRV374 dating back approximately ten years.

Since May 2005, Pinnacle has constructed and promoted Maritime’s spectrum holdings within the State of New Jersey and New York City markets. This was accomplished under a series of agreements between Pinnacle and Maritime culminating in the existing spectrum lease agreements between the parties for Maritime’s Station WRV374 (site-based license) in the northern part of New Jersey, and Station WQGF315 (geographic license) in the southern part of New Jersey. Between 2005 and 2008 Pinnacle constructed and put into operation thirty-two (32) 220 MHz frequencies across nineteen (19) sites currently operating under these spectrum lease agreements. More than 2,700 subscriber units are currently operating on this network providing public safety and critical communications to two different New Jersey State agencies.

Pinnacle’s operations under its agreements with Maritime include construction of a twelve (12) channel trunked radio network for the New Jersey Sports and Exposition Authority at the Meadowlands Sports and Entertainment Complex, which includes Giant Stadium. This system has seven hundred fifty (750) subscriber devices supporting Fire, Medical, Security and

Traffic Operations by the Authority. The Authority uses the network for critical communications in carrying out the Authority's responsibility for the safety of more than eight million (8,000,000) visitors to the Meadowlands complex every year.

Pinnacle also has constructed an eighteen (18) site trunked radio network for the New Jersey Turnpike Authority using the Maritime spectrum. This network provides voice and data service on the New Jersey Turnpike and Garden State Parkway, currently serving two thousand (2,000) active subscriber devices, including sixteen hundred (1,600) data devices (providing GPS/AVL and telemetry functions) in support of Public Safety, Driver Safety, Construction, Maintenance and Traffic Operations. These operations are critical to the New Jersey Turnpike Authority's responsibility for the safety of almost nine hundred million (900,000,000) drivers every year.

The New Jersey Turnpike Authority and the New Jersey Sports and Exposition Authority currently operate on the spectrum under Stations WRV374 and WQGF315 that Pinnacle leases from Maritime for operation of the respective State networks. Without the continued availability of this spectrum, these two networks will be shut down and Pinnacle and the State of New Jersey will incur financial, operational and life safety risks as a result. Accordingly, Pinnacle has a significant interest in this proceeding.

In addition to Pinnacle's construction of Maritime's spectrum for these two New Jersey State agencies, Pinnacle also has firsthand knowledge of the construction of Station WRV374 dating back to 2002, pursuant to an SMR service agreement between Motorola and Maritime's predecessor, Mobex. Under this SMR service agreement, Motorola provided the infrastructure equipment and constructed the system using the channels provided by Mobex under Call Sign WRV374. During 2002 to 2005, Pinnacle made sales efforts, as a Motorola dealer and service

shop, to promote loading of this SMR network. Tower space for the Verona site supporting this network was leased by Mobex from Warner Communications, which Pinnacle acquired in 2006/2007. After 2005, Pinnacle purchased from Motorola and deconstructed the 220 MHz Passport network that had been constructed in support of the SMR service agreement.

Accordingly, Pinnacle has information about its own construction of Station WRV374 during 2005 to the present, and also about the construction of Station WRV374 during the period 2002-2005 period. Accordingly, Pinnacle's participation in this proceeding will assist the Commission in resolving Issue (g) with respect to Station WRV374.

### **3. Pinnacle's Intervention is Timely and Should be Approved**

Although the Commission is aware of the spectrum leases entered between Pinnacle and Maritime, the HDO did not designate Pinnacle or any other spectrum lessees as parties to this proceeding.<sup>2</sup> Further, under the spectrum lease agreements between Pinnacle and Maritime, Maritime retains responsibility for maintaining the integrity of the licenses at the FCC. Accordingly, and particularly based on the requirements of the existing lease agreements, Pinnacle was not in a position to intervene in this proceeding at the time of the HDO. This changed with Maritime's recent bankruptcy filing. Maritime's recent filing of a petition in bankruptcy raises questions as to whether Maritime has the resources needed or is otherwise able or willing adequately and fully to address Issue (g) with respect to Station WRV374. Maritime's bankruptcy filing presents a unique and unforeseen circumstance justifying Pinnacle's intervention at this time.<sup>3</sup> Given the importance of Station WRV374 to both Pinnacle as well as

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<sup>2</sup> See leases L000005431, L000007036, and L000006933 (cancelled and superseded by File no. 0004131898).

<sup>3</sup> See Lamar Life Broadcasting, *Memorandum Opinion and Order*, 48 FCC 2d 807, 812 (Review Board, 1974) (Party allowed to intervene at the end of a proceeding, *some three years after the*

the two New Jersey State agencies operating systems utilizing spectrum authorized under Station WRV374, Pinnacle has determined to seek to intervene in this proceeding. No party will be harmed by Pinnacle's intervention at this juncture, nor will the orderly conduct of the proceeding be disrupted, particularly as this proceeding remains in its early stages.<sup>4</sup> Indeed, the presiding Judge only recently, on October 26, 2011,<sup>5</sup> ordered discovery on Issue (g) to proceed, and oless than two weeks ago, on December 7, 2011, the Enforcement Bureau, in a joint motion with the Havens parties,<sup>6</sup> initiated the discovery process on this issue by filing a request for leave to take discovery from Maritime on Issue (g).<sup>7</sup>

Although the Havens parties joined in the Enforcement Bureau's recent request to seek discovery on issue (g) from Maritime, it seems unlikely that Havens has any real interest in gathering evidence demonstrating construction of Maritime's site-based licenses since it is Havens who is seeking to have the site-licenses cancelled for *alleged* lack of construction. Indeed, less than a week after this Court ordered discovery on Issue (g) to go forward in this proceeding, Havens, in a blatant attempt to circumvent this proceeding, filed a petition dated November 1, 2011, with the Wireless Telecommunications Bureau ("WTB"), asking WTB to

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*proceeding had begun*, so that party could present newly discovered information necessary to fair resolution of proceeding.

<sup>4</sup> Mid-Florida Television Corporation, *Memorandum Opinion and Order*, 57 FCC 2d 303, 307 (Review Board, 1975) ("It is also clear that a grant of the right of intervention at this time will not disrupt the orderly conduct of the hearing, since the intervenor must of course take the hearing at the stage at which it finds it.")

<sup>5</sup> October 26, 2011 Order.

<sup>6</sup> Environmental LLC; Intelligent Transportation and Monitoring Wireless LLC; Skybridge Spectrum Foundation; Telesaurus Holdings GB LLC; Verde Systems LLC; V2G LLC; and Warren Havens (hereafter, "Havens").

<sup>7</sup> Joint Motion for Leave to Serve Discovery on Maritime Relating to Nonconstruction and Discontinuance of Site-Based Operations, filed by Enforcement Bureau and Havens Parties on December 7, 2011).

find automatic termination of Station WRV374, and requesting *expedited action* on the petition.<sup>8</sup> Moreover, Havens did not file its unauthorized pleading with this Court, or even notify this Court that Havens filed its unauthorized petition with the WTB. As a full party to this proceeding and having joined in the Enforcement Bureau's recent discovery request on Issue (g), Havens is certainly aware that the issue of construction of WRV374 is designated by the Commission to be resolved by the presiding Judge herein. Accordingly Havens' attempt to go outside this proceeding and have WTB cancel WRV374 in an expedited manner is an obvious attempt by Havens to undermine the integrity of this proceeding, avoid discovery on the construction issue, and force a decision without full evidentiary disclosure or consideration of all the facts. *The public interest demands a full inquiry that considers all of the evidence, including Pinnacle's intimate knowledge of facts demonstrating the construction of Station WRV374, and accordingly this petition to intervene should be granted.*<sup>9</sup>

It was not possible for Pinnacle to anticipate that Maritime would file a petition in bankruptcy or that Havens, who has been granted party status, would seek to circumvent this proceeding by seeking expedited cancellation of Station WRV374 without allowing full discovery and disclosure on Issue (g) as it relates to Station WRV374. Accordingly, it is important to the integrity of this process that Pinnacle be granted party status so that full and fair consideration of Issue (g) as it relates to Station WRV374 can proceed, and so that Pinnacle's rights can be fully protected. No party will be harmed by allowing Pinnacle to intervene at this juncture insofar as discovery is only getting underway. Moreover, given Havens' attempt to institute a separate proceeding before the WTB on this issue, Pinnacle's participation as a party here is important to prevent a bifurcated approach to resolving this issue in separate proceedings

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<sup>8</sup> "Section 1.41 Request to Find Automatic Termination *Expedited Action Requested*" (11/01/11).

<sup>9</sup> See Lamar Life Broadcasting, *supra*, at 812.

before different decision makers, and under the unique circumstances of this case the Petition to Intervene should be granted.<sup>10</sup>

Counsel for the following parties were notified of Pinnacle's intent to file this Petition to Intervene and each indicated they had no objection:

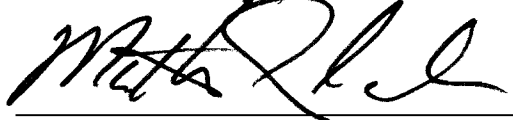
- FCC Enforcement Bureau
- Maritime Communications / Land Mobile, LLC
- Encana Oil and Gas (USA), Inc.
- Duquesne Light Company
- Jackson County Rural Membership Electric Cooperative
- Enbridge Energy Company, Inc.
- Dixie Electric Membership Corporation, Inc.
- Atlas Pipeline – Mid Continent, LLC
- Denton County Electric Cooperative, Inc., DBA CoServ Electric
- Southern California Regional Rail Authority

### **CONCLUSION**

For the foregoing reasons, Pinnacle respectfully requests that its Petition to Intervene be granted and that Pinnacle be given status as a Party in this proceeding.

Respectfully submitted,

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Dated: December 19, 2011

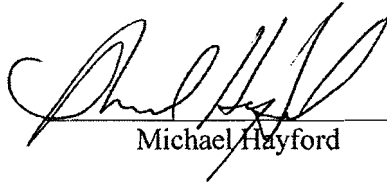
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<sup>10</sup> *Atlantic Radio Communications, Inc.*, 7 FCC Rcd 5105 (1992) (Commission allowed a party to intervene very late in a proceeding to avoid a bifurcated approach in different forums).

### **Declaration of Michael Hayford**

I, Michael Hayford, declare under penalty of perjury that:

1. I am President of Pinnacle Wireless, Inc. ("Pinnacle"), a position I have held for more than ten years.
2. I have reviewed the attached Petition to Intervene on behalf of Pinnacle, and I am familiar with the events and circumstances described therein.
3. The factual information set forth in the Petition to Intervene on behalf of Pinnacle is true and correct to the best of my knowledge



Michael Hayford

Dated: December 16, 2011

## CERTIFICATE OF SERVICE

I hereby certify that on this 19<sup>th</sup> day of December, 2011, I caused copies of the foregoing pleading to be served, by U.S. Postal Service, First Class postage prepaid, on the following:

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